

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Jurisdictional Separations and Referral)	CC Docket No. 80-286
To the Federal-State Joint Board)	
)	
Petition by Terral Telephone Company, Inc.)	
For Waiver of 47 C.F.R. Sections 36.3,)	
36.123-126, 36.141, 36.152-157, 36.191 and)	
36.372-382 to Unfreeze Part 36 Category)	
Relationships)	

COMMENTS OF SPRINT NEXTEL CORPORATION

Sprint Nextel Corporation (“Sprint”), pursuant to the Public Notice released on October 22, 2012 (DA 12-1692), hereby respectfully submits its comments on the above-referenced petition for waiver filed by Terral Telephone Company, Inc. (“Terral”) on August 29, 2012. In this petition, Terral seeks a permanent waiver of several Part 36 jurisdictional separations rules to allow it to “properly allocate its costs.”¹ Terral states that if it is allowed to unfreeze its Part 36 category relationships, it would recover costs associated with its broadband facilities from interstate special access charges rather than from USF and end user common line charges.²

Sprint agrees that cost recovery should be linked to cost causation as closely as possible. As Sprint has previously demonstrated, separations rules have not kept pace with the change in the telecommunications industry, and the Commission should reform

¹ Petition, p. 1.

² *Id.*, p. 5.

these rules rather than simply extending the freeze on category relationships.³ Terral is the second ILEC to have recently requested a waiver of the frozen rules,⁴ and it is likely that other carriers will request similar waivers to adjust their investment and cost allocations among various Part 36 categories. Because the freeze affects hundreds of ILECs that are subject to Part 36, Sprint again urges the Commission to address this matter comprehensively rather than on a carrier-by-carrier basis through the waiver process.

Comprehensive reform of rules should address not only cost and investment allocations between the interstate and intrastate jurisdictions, but also carrier cost recovery across services. Accurate cost allocation and cost recovery are especially important in situations in which the service provider has market power in the provision of certain services. Thus, even if the existing rules are not specific about cost recovery within broad categories, the Commission should make clear that grant of a waiver such as that requested here by Terral does not give an ILEC unfettered discretion to recover costs from whichever interstate rate elements it chooses. If Terral's petition is granted, it should be required to recover the cost of broadband facilities from broadband customers, and to recover the cost of its special access facilities from subscribers of its special access (*e.g.*, DS1, DS3) services. Accurate cost recovery will help to limit inter-service cross-subsidies and potential harms associated with the exercise of monopoly power.

³ See *Jurisdiction Separations and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Sprint comments filed on April 5, 2012. The Commission extended the freeze through June 30, 2014 (*Report and Order* released May 8, 2012, FCC 12-49) to give the Joint Board additional time to develop a plan of comprehensive separations reform.

⁴ See Petition for Waiver of 47 C.F.R. Sections 36.3, 36.123-126, 36.141, 36.152-157, 36.191 and 36.372-382 to Unfreeze Part 36 Category Relationships, CC Docket No. 80-286, filed by Eastex Telephone Cooperative, Inc. on May 18, 2011.

Terral's reason for filing the instant petition is clear – the “anticipated reduction of universal [service] support to Terral due to the USF/ICC reform is projected to cause significant financial harm to Terral.... This waiver to unfreeze its categories is necessary in its overall plan to move its costs from support mechanisms to special access.”⁵ Terral and other local exchange carriers should not be allowed to offset reductions in existing subsidy levels by increasing rates disproportionately to customers that do not benefit from the broadband facilities subject to the instant petition, particularly when, as is likely in Terral's service territory, those customers lack competitive alternatives.⁶ Cross-subsidies and implicit subsidies in intercarrier compensation mechanisms cause serious market distortions and other public interest harms,⁷ and the Commission should strongly discourage any attempt to circumvent its transformational reforms through cost allocation waivers that do not promote and ensure appropriate cost recovery.

It is only reasonable that the cost recovery process fairly reflect the relative benefits accruing to different classes of customers. Although details about its network deployment were redacted, one may presume, based on the rural nature of its service territory⁸ and Terral's description of how it would use any additional settlements

⁵ *Id.*, p. 5.

⁶ It is highly unlikely that competitive alternatives to ILEC-provided special access services abound in service areas such as Terral's. Interexchange and wireless carriers that need special access facilities in these geographic areas are at the mercy of the monopoly ILEC service provider.

⁷ See, e.g., *Connect America Fund et al.*, 26 FCC Rcd 17663 (2011) (“*ICC/USF Transformation Order*”), para. 9 (an inefficient intercarrier compensation system “creates competitive distortions,” “is unfair to consumers,” and provides “opportunities for wasteful arbitrage”).

⁸ Terral's service area is “rural agricultural land with only one small community” (Petition, p. 4).

resulting from unfreezing the Part 36 category relationships,⁹ that a significant and perhaps even a majority of Terral's broadband network facilities were deployed to provide service to its retail residential and business customers. If this is the case, Terral should recover a proportionate amount of the increased costs from services provided to its broadband customers, and not attempt to recoup most or all of its increased interstate cost allocation through higher special access charges assessed on access service subscribers.

Sprint continues to urge that the Commission move forward with comprehensive cost allocation reform. However, pending such comprehensive reform, the Commission must make any grant of a waiver such as that requested here by Terral contingent upon rational cost recovery. Broadband investments and related expenses must be recovered from broadband services, not through inflated special access rates from carriers that have no competitive alternative to the ILEC-provided special access services.

⁹ "Terral will use the additional cost-based settlements to reduce the \$[redacted] debt that has already been incurred which was used to deploy state of art voice service..." and "to continue expanding its network and enhancing broadband service to its subscribers" (*id.*, p. 12).

Respectfully submitted,

SPRINT NEXTEL CORPORATION

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